



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 33 of the Housing (Scotland)  
Act 1988**

**Chamber Ref: FTS/HPC/EV/20/1355**

**Re: Property at Flat 2/1, 94 Skirsa Street, Glasgow, G23 5EQ (“the Property”)**

**Parties:**

**Mr David Cowan, Mr Stephen Olliffe, Flat 3/2, 27 St Mungo Avenue, Glasgow, G4  
0PG; 7 Fife Avenue, Glasgow, G52 3EW (“the Applicants”)**

**Linda Milligan, Flat 2/1, 94 Skirsa Street, Glasgow, G23 5EQ (“the  
Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that a possession order in terms of section 33 of the  
Housing ( Scotland ) Act 1988 should be made in respect of the property.**

**Background**

This is an Application for a possession order in terms of Section 33 of the Housing (Scotland) Act 1988. The application was received by the Tribunal on 18 June 2020 and was accepted on 28 June 2020. A case management discussion was assigned for 21 August 2020 at 2pm.

**Case Management Discussion**

Both of the Applicants attended the case management discussion along with their Representative Mrs Val West. The Respondent Linda Milligan also attended the case management discussion. She was supported by her son Scott Milligan who took over

as her Representative during the case management discussion as she was finding it difficult to speak about matters during the teleconference call.

The Tribunal had sight of the application, a short assured tenancy agreement, a form AT5, a Notice to Quit, a Notice in terms of section 33 of the Housing (Scotland) Act 1998, a Notice in terms of Section 11 of the Homelessness etc (Scotland) Act 2003, a certificate of posting, and a track and trace receipt. When the case management discussion started the Tribunal indicated that it did not have sight of intimation of the section 11 Notice to the local authority. During the case management discussion Mrs West emailed the Tribunal copying the email to the local authority sending the section 11 Notice. This was copied over to the Respondent who gave permission to receive this by e mail.

Ms Milligan found the case management discussion to be difficult and after representing herself initially, asked that her son Scott who was with her on the teleconference call, be allowed to represent her. There was no objection to this course of action and the Tribunal allowed Scott Milligan to represent the Respondent. Both Ms Milligan and her son advised the Tribunal that she suffered from mental and physical health difficulties and indicated that she was very stressed by the whole process of possible eviction. She was able to confirm that she had had receipt of the Notice to Quit and Notice in terms of section 33 of the Housing (Scotland) Act 1988 on the 25<sup>th</sup> March 2020 as set out in the trace and trace receipt lodged by the Applicants. The Tribunal explained to her the type of tenancy she had and the position surrounding the application and what was required for a possession order. In particular the Tribunal explained that because the Notices in this application, that is the Notice to Quit and the Notice in terms of Section 33 of the Housing (Scotland) Act 1988 had been served before 7 April 2020 that the Coronavirus (Scotland) Act 2020 did not apply to this application, which meant the application proceeded on the basis of the law in force at the time when the notices were served on her i.e. on 25th March 2020.

Scott Milligan requested a continuation of the case management discussion in order that Ms Milligan could obtain alternative accommodation. He explained that they would need three months in order to find a suitable alternative place for Miss Milligan to stay. He explained to the Tribunal that contact had been made the week before the case management discussion with the housing department and it had been suggested that a letter from Ms Milligan's GP would assist in her search for accommodation. They were in the process of getting such a letter. He pointed out she had lived at the property for many years and it was sad that it had come to this and that her age, which Mr Milligan said was almost 60, and her health difficulties, meant that she ought to have more time to find an alternative place to stay. He pointed out that the Notices had been served around the start of the Covid - 19 lockdown measures in Scotland. Mrs West on behalf of the Applicants opposed a continuation of the case management discussion and requested that a possession order be made at the case management discussion.

The Tribunal considered the application for a continuation and noted that this was a request for a possession order in which, if the requirements of the legislation had been met, the Tribunal had no discretion but required to grant the possession order. The Tribunal considered that the notices had been served on 25th March 2020 requesting that the premises be vacated by 28<sup>th</sup> May 2020. A period of almost 3 months had elapsed since the date by which the Respondent was to vacate the premises. Even with the Covid-19 pandemic restrictions as mentioned by Mr Milligan, which may have caused issues in receiving assistance soon after the Notices were served, the Tribunal was of the view that there would have been a number of weeks before the case management discussion to seek assistance to source new accommodation. The Tribunal noted that the Respondent had already started to do that. Balancing the nature of the application and request to proceed with the difficulties outlined by Mr Milligan, the Tribunal took the view that it would not continue the case management discussion, given the period of time that had elapsed since the notices were served on the Respondent, almost 5 months. It also appeared from what Mr Milligan said, that a search for alternative accommodation was underway and assistance was being offered, the only issue being the amount of time that would take to obtain new accommodation.

Mrs West moved for the possession order. The Tribunal considered the documentation that it had to support the application. The Tribunal was satisfied that the tenancy was a short assured tenancy, that it had been brought to an end by the Notice to Quit on the correct date and that the appropriate statutory notice in terms of the Housing (Scotland) 1988 had been served on the Respondent. The Respondent confirmed that she had received both notices and understood what they meant.

It became clear during the course of the case management discussion that Ms Milligan and her son Scott did not fully appreciate the length of time proceedings would take to conclude if a possession order were made. At the request of Mrs West the Tribunal explained that if a possession order was made there would be a period of just over 30 days between receipt of the decision by parties and any possession order being sent to the Applicant's representative to act upon. This period would allow a party to seek leave to appeal the decision of the Tribunal if appropriate on a point of law. There would then, after that period, once an Applicant received any possession order made, require to be a Form of Charge for Removing served which would give 14 days to leave the property. Only once these steps had been gone through would a date be set for removal.

The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the procedure had been fair.

The Tribunal granted a possession order in terms of Section 33 of the Housing (Scotland) Act 1988.

After the order was granted Mrs West for the Applicants indicated that she would undertake to let the Respondent know when she received the Possession order from the Tribunal so that this would help with Ms Milligan's understanding of timescales for leaving the property. Mrs West also indicated that she would be prepared to assist Ms Milligan in signposting her to agencies who could assist her and this included assistance towards finding another private rented property if that was appropriate.

### **Findings in Fact**

1.The Applicants entered into a short assured tenancy at the property with the Respondent starting on 28<sup>th</sup> October 2011 with a stated end date of 28<sup>th</sup> April 2012.

2.The tenancy agreement specified that it would continue on a monthly basis after 28<sup>th</sup> April 2012 and would so continue until ended by either party. The agreement continued on a monthly basis after 28<sup>th</sup> April 2012.

3.The monthly rent payable was £500.

4.A Form AT5 had been given to the Respondent on 25<sup>th</sup> October 2011 and was produced in support of the Application.

5.A Notice in terms of S11 of the Homelessness etc (Scotland) Act 2003 was sent to Glasgow City Council in respect of this Application.

6. A Notice to Quit in proper form was served on the Respondent on 25<sup>th</sup> March 2020 advising the Respondent to leave by 28<sup>th</sup> May 2020 and bringing the tenancy to an end as of that date.

7.Tacit relocation is not operating, the tenancy having been brought to an end on 28<sup>th</sup> May 2020.

8.A Notice in terms of Section 33 of the Housing ( Scotland ) Act 1988 was served on the Respondent on 25<sup>th</sup> March 2020 giving notice that the property was required as at 28<sup>th</sup> May 2020.

### **Reasons for Decision**

The Tribunal was satisfied that the requirements of Section 33 of the Housing (Scotland) Act 1988 had been met in that the tenancy was a short assured tenancy and it had been terminated by service of a Notice to Quit giving notice for the correct date. The statutory tenancy which then came in to being had been terminated by the giving of notice in appropriate form and as such the order shall be granted. The Tribunal noted that as the notices served here predated the coming into force of the

Coronavirus ( Scotland ) Act 2020, the Tribunal had no discretion as to the granting of a possession order for the property.

### **Decision**

The Tribunal made a possession order for the property at Flat 2/1, 94 Skirsa Street, Glasgow, G23 5EQ in terms of Section 33 of the Housing (Scotland) Act 1988.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

# V Bremner

21/08/2020

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Legal Member/Chair

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Date